

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Larry David Davenport,)	C.A. No. 6:09-766-TLW-WMC
)	
Plaintiff,)	
)	
-versus-)	ORDER
)	
Melissa Johnson,)	
)	
Defendant.)	
)	

The Plaintiff has brought this *pro se* action against the Defendant under Title 42, United States Code, Section 1983. This matter is now before the undersigned for review of the Report and Recommendation (“the Report”) filed by United States Magistrate Judge William M. Catoe, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In his Report, Magistrate Judge Catoe recommends that the Complaint in this action be dismissed without prejudice and without issuance and service of process. The plaintiff has filed objections to the Report.

In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of this standard, the Court has reviewed, de novo, the Report and the objections thereto. The Court accepts the Report. The Report concludes that plaintiff has failed to state a claim against the defendant and/or has not requested any relief. In his objections plaintiff indicates that he is requesting lost wages and punitive damages. However, he does not allege any additional facts in support of a constitutional violation by this defendant. This Court agrees with the conclusion reached by the Magistrate Judge in the Report that plaintiff's allegations of misrepresented facts and disingenuous statements in court by the defendant do not rise to the level of a constitutional violation, thereby depriving plaintiff of a federal right; and that accordingly, plaintiff has failed to state a claim.

THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's Report is **ACCEPTED** (Doc. # 16); plaintiff's objections are **OVERRULED** (Doc. # 18); and the Complaint in this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ Terry L. Wooten

TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

June 30, 2009
Florence, South Carolina